

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

RSA.No. 659 of 2006()

AS.118/2002 of PRINCIPAL SUB COURT,KOCHI
OS.830/1998 of ADDL.MUNSIFF COURT,KOCHI
.....

: APPELLANTS/APPELLANTS/PLAINTIFFS:

1. MABLE K.J., W/O. LATE JOHN,
PUTHENVEETIL HOUSE, COCHIN-7.
2. SABU P.J., S/O. LATE JOHN, DO.
3. ELIZEBETH SHINE, D/O. LATE JOHN, DO.
4. MARGERIT SIGI, D/O. LATE JOHN, DO.
5. ANTONY JOHN, S/O. LATE JOHN, DO.
6. MARY. A.A., C/O. P.J. JOY,
PALAYIL HOUSE, AROOR P.O., ALLEPPY.
7. SARAMMA, D/O. PATHROSE,
KOCHERRY HOUSE, KUMBALANGHI, COCHIN-7.
8. KOCHANNA, D/O. PATHROSE,
PALAYIL HOUSE, AROOR P.O., ALLEPPY.

BY ADV. SRI.E.G.GORDEN

RESPONDENTS: DEFENDANTS:

1. CHANDRAMATHY, W/O. PUSHPAN,
MANNALIL HOUSE, CHULLICKAL, COCHIN-5.
2. JALAJA, W/O. HARIHARAN,
EZHUPUNNA P.O., CHERHATHALA TALUK,
ALLEPPEY.
3. SAHADEVAN, S/O. LATE CHEERAN,

MANNALIL HOUSE, KUMBALANGHI, COCHIN-7.

BY ADV. SRI.N.G.SUNIL
SMT.P.JAYA

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

In view of the order passed in C.M.Appl.495/06 dated 15/10/07
the appeal is also dismissed.

Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

ORDER ON I.A.No.1709/2006 in R.S.A.NO.659/2006

15.10.2007

DISMISSED Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S.to Judge

M.SASIDHARAN NAMBIAR, J.

=====

C.M.Appl.NO. 495 OF 2006
 in
 R.S.A.No.659 of 2006

=====

Dated this the 15th day of October, 2007

O.R.D.E.R

This petition is filed under section 5 of the Limitation Act to condone the delay of 920 days in filing the appeal. Case of the petitioners is that they originally filed C.R.P.180/2004 as they were advised that it is the remedy and later finding that the remedy is to file a second appeal, the appeal was filed and the delay was caused on account of the wrong remedy chosen by petitioners and hence delay is to be condoned. Petition was seriously opposed by respondents on the ground that there is no sufficient cause.

2. Learned counsel appearing for petitioners and respondents were heard.

3. The first appeal was dismissed as barred by time, after dismissing the application to condone the delay of 77 days in filing the appeal. It is

challenging the order of dismissal of the application to condone the delay C.R.P. 180/2004 was filed. That C.R.P. was disposed by this court as per order dated 12.1.2006. The order shows that C.R.P. was dismissed as not maintainable as the remedy is to file an appeal. The order also provide that while considering the delay application in filing the appeal, if any preferred by the petitioners in the C.R.P, pendency of the C.R.P.shall be taken into consideration.

4. The question is whether in such circumstance, there is any justification for not filing an appeal immediately after the disposal of C.R.P.180/2004 on 12.1.2006. This second appeal was filed only on 3.8.2006. Therefore petitioners have to explain the delay atleast from 12.1.2006 till 2.8.2006. There is absolutely no explanation for the delay except the allegation that daughter of first petitioner died on 6.7.2006. There was sufficient time before 6.7.2006 to file an appeal. In such circumstance, the delay cannot be condoned

as no sufficient cause was shown.

Petition is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006